

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

GEORGE BRUMITT, ON BEHALF
OF HIMSELF AND THE CLASS
DESCRIBED HEREIN,

PLAINTIFFS,

v.

UNIFUND CCR PARTNERS, UNIFUND
CORPORATION, CREDIT CARD
RECEIVABLES FUND INCORPORATED
AND ZB LIMITED PARTNERSHIP,

DEFENDANT(S).

CASE NO. 2:05cv396-WHA-DRB

DEFENDANTS' JOINT MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) AND
TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO RULE
12(b)(1)

Defendants, Unifund CCR Partners (“Unifund CCR”), Unifund Corporation, Credit Card Receivables Fund, Incorporated, and ZB Limited Partnership (collectively the “Defendants”), by and through counsel, respectfully move this Court to dismiss the claims of Plaintiff, George Brumitt (the “Plaintiff”), brought individually and on behalf of a putative class. In support of this Motion, the Defendants state as follows:

1. On April 29, 2005, the Plaintiff filed his three-count Complaint asserting Fair Debt Collection Practices Act (“FDCPA”) claims against the Defendants, on behalf of himself and on behalf of a putative class.

2. The Plaintiff's claims should be dismissed in their entirety, with prejudice, pursuant to Fed. R. Civ. P. 12(b)(6).

3. None of the actions which the Plaintiff alleges in the Complaint constitute violations of the FDCPA.

4. The Plaintiff seeks to impose liability for the filing of a debt collection lawsuit in Alabama, which was dismissed on procedural grounds due to the fact the party prosecuting the action did not appear at trial. The Plaintiff thus questions the validity of all debt collection lawsuits.

5. Debt collection lawsuits are an accepted means of collecting debts, both according to the language of the FDCPA and the United States Supreme Court precedent interpreting the FDCPA.

6. Thus, the Plaintiff's claims should be dismissed, with prejudice, pursuant to Fed. R. Civ. P. 12(b)(6).

7. Further, the Plaintiff's class action allegations should be stricken to the extent that they violate the *Rooker-Feldman* doctrine established by the United States Supreme Court.

8. The Plaintiff alleges that the pleadings filed by Unifund in Alabama State court debt collection actions, and particularly in the action filed against the Plaintiff, do not make a *prima facie* showing of an account stated.

9. The Plaintiff's class action allegations fail to exclude Alabama judgment debtors against whom Unifund prevailed in Alabama state court actions, and in which the Alabama courts determined that not only was there a *prima facie* showing of an account stated, but that the debts on which Unifund sued were valid.

10. The Plaintiff thus seeks United States District Court review of state court judgments, which is expressly forbidden by the *Rooker-Feldman* doctrine because United States District Courts lack jurisdiction to hear such cases. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1521-22 (2005).

11. The Plaintiff's class action allegations must therefore be dismissed for lack of jurisdiction to the extent that they seek to include judgment debtors against whom Unifund filed debt collection lawsuits in Alabama and prevailed.

12. Contemporaneously with this Motion, Defendants submit a Memorandum of Law, which is hereby incorporated by reference.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that this Court dismiss the Plaintiff's claims and the class action allegations to the extent that the class action allegations violate the *Rooker-Feldman* doctrine.

Respectfully submitted,

/s Joshua H. Threadcraft

John P. Scott, Jr.

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)	
DEFENDANT(S).)	

CERTIFICATE OF SERVICE

I do hereby certify that on this the 15th day of June, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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